

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

ROBERT CAYTON

CIVIL DOCKET NO. 10-0824

-vs-

JUDGE DRELL

TIMOTHY WILKINSON, ET AL

MAGISTRATE JUDGE KIRK

J U D G M E N T


For the reasons contained in the Report and Recommendation of the Magistrate Judge previously filed herein, and after independent (de novo) review of the record including the objections filed herein, and concurring with the Magistrate Judge's findings under the applicable law;

IT IS ORDERED that Defendant's Motion for Summary Judgment is DENIED and Plaintiff's claim for failure to protect is DISMISSED WITH PREJUDICE; and Plaintiff's claim regarding appropriate medical assistance is DISMISSED WITHOUT PREJUDICE.

In so ruling we also have considered the content of plaintiff's objections and the absence in the Report and Recommendation of any guidelines for the refiling of his ARP, should he choose that option. Accordingly, we allow him an additional 20 days following this judgment to refile his first-step ARP, but limited to the claims for failure to render appropriate medical assistance which accrued beginning 90 days prior to April 16, 2010. By our calculation, Plaintiff's medical assistance claims

commencing and subsequent to January 17, 2010 were timely brought in the ARP filed April 16, 2010. Because the failure to protect claim was a result of the incident on October 28, 2009, Plaintiff's claim as to this issue is DISMISSED WITH PREJUDICE. Plaintiff's claims for failure to render appropriate medical assistance beginning about January 17, 2010 may be refiled in an ARP. Accordingly, Plaintiff's § 1983 claim as to his medical assistance is DISMISSED WITHOUT PREJUDICE and may be refiled as new suit, if appropriate, once Plaintiff has exhausted his administrative remedies.

Signed on this 27th day of October, 2011, at Alexandria, Louisiana.

A handwritten signature in black ink, appearing to read "Dee D. Drell", is written over a horizontal line.

DEE D. DRELL
UNITED STATES DISTRICT JUDGE